adopted. That has been decided on a great variety of Acts where the application has been directed to be by petition, and it has been laid down that that being the mode pointed out by the Act which conferred the jurisdiction, you must exercise the jurisdiction (as the 2nd section of this Act says in terms, though it was not necessary) according to the provisions of the Act."

I am of opinion that the dissatisfied party must take the remedy of appeal under section 237 if that is open to him, and that if he fails to appeal he must be taken to acquiesce in the order. Otherwise by instituting a declaratory suit he attempts to obtain the same result as he would by appealing but evades the time limit prescribed by section 237; and we get the intolerable position that an auction purchaser has no security of title till the expiry of the limitation period, that the chargor who has discovered a flaw need not appeal and set the order aside but may lie by and use his knowledge at any time within the limitation period to set aside a sale of which he may not approve for other reasons. The root principle of the Torrens system is that the Register should be a mirror of title and that a purchaser should not have to search beyond the title. But no prospective purchaser would have the right to see these orders, and if he saw them, he would not be able to conclude that they are bad without going through the whole record of the case before the Collector which lasted over two years and considering every step. And in many cases the decision as to whether or not an order is bad would not be such an easy matter as it appears in this case. Yet even in this case there is nothing on the face of either of these orders by which an intending purchaser could see that they are bad.

But it was also argued that these orders were nullities, as made without jurisdiction, and that consequently it is not necessary to set them aside. There is no doubt that in the case of inferior jurisdictions unless sufficient appears on the face of the proceedings themselves to show that the jurisdiction exists, the proceedings are void (see *Taylor* v. *Clemson*, (1842) 2 Q.B. 978). On the other hand where an order, on the face of it good, is made by a competent authority, it must be deemed to be good until it is set aside by whatever procedure may be prescribed or allowed by law. In this case the orders complained of are on the face of them good; and in the case of *Home* v. *Earl Camden*, 2 H. Bl. 533; 126 E.R. 687, at page 536, Eyre, C.J., says:—

> "It must be admitted that the misinterpretation of either the common or statute law in a proceeding confessedly within the jurisdiction of these Courts, and where they are bound to exercise their judgment upon one or the other, seems to be rather a matter of error, to be redressed in the course of the appeal which the law has provided, than a ground for prohibition."

These words seem to me exactly applicable to the present case. The Collector has confessedly acted within his powers but has made a series of blunders in the application of the law. The remedy of the plaintiff was appeal. He did not take that remedy, and I think he must be taken to have acquiesced in the orders and that it is too late for him to question the orders now.

I think the appeal should be dismissed with costs.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

May 16, 1934.

HOWES, J.

CHIN TIN CHIN.....**Appellant**

vs.

PUBLIC PROSECUTOR.....**Respondent**

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 16 of 1934]

Common Gaming Houses Enactment, 1912, Sections 2, 4 (i) (d) and 8A—Public lottery—Sale of tickets in a private lottery to the public.

The Common Gaming Houses Enactment, 1912. is aimed (*inter alia*) at the suppression of public lotteries and it cannot have been the intention of that Enactment to suppress private lotteries.

The sale of tickets in a private lottery to the public does not thereby change such lottery into a public one, and consequently the seller cannot be convicted of selling tickets in a public lottery.

J. Dunford Wood for the Appellant.

L. C. Simpson-Gray, Deputy Public Prosecutor, for Respondent.

HOWES, J.—In this appeal the charge against the accused was that he "on or about 11-30 a.m. on 25.11.33 at the Overseas Bank, Ipoh, did sell seven lottery tickets, an offence under Sec. 4 (i) (d) of Enactment No. 19/1912," which reads as follows:—

> "4 (i) Whoever—
>
> .....
>
> (d) receives directly or indirectly any money or money's worth for or in respect of any chance in any event or contingency connected with a public lottery or sells or offers for sale or gives or delivers any lottery ticket;
>
> "shall be punishable with a fine not exceeding three thousand dollars or with imprisonment of either description for a period not exceeding twelve months."

The second portion of the sub-section creates the offence of which the accused was convicted.

"Lottery ticket" as defined in section 2 (i) "includes any paper.....which either expressly or tacitly entitles or purports to entitle the holder or any other person to receive any money or money's worth on the happening of any event or contingency connected with any public lottery."

"Public lottery" means "a lottery to which the public or any class of the public has or may have access, and every lottery shall until the contrary be proved be deemed to be a public lottery."

Section 8A of the Enactment further provides that "A person selling lottery tickets..... shall be presumed until the contrary be proved to be assisting in a public lottery then in progress."

The lottery in question was a sweep, organised by the Penang Turf Club for its Xmas —New Year Gold Cup Meeting, 1933-1934, and the seven tickets were proved to have been sold by the accused.

The issue was: were these sweep tickets "lottery tickets" within the meaning of Section 4 (i) (d) as defined by Section 2 (i)?

Although every lottery is deemed a public lottery until the contrary is proved, in order to come within the above definition, the tickets must be "connected with any public lottery." It then becomes a question, how is the contrary to be proved? The definition does not directly put on the accused onus of such proof: but, no doubt, this was the intention of the Enactment unless some other proof is given.

A lottery must be either public or not public: *i.e.*, private.

The Enactment, from its title, was clearly aimed at the suppression of "public lotteries," a curious limitation, since in England, under the old Gaming Acts, the expression "public lottery" was only used in connection with lotteries sanctioned by Act of Parliament.

It cannot have been the intention of the Enactment to suppress private lotteries; as if this were so, the word "public" would be redundant.

Mr. S. C. Vickers, the Secretary of the Penang Turf Club, who was called as a witness for the prosecution stated, in cross-examination, that the Penang Turf Club is a private club; this lottery is a private lottery, and the seven tickets were issued as private lottery tickets. His evidence as to this was not rebutted by the prosecution.

These tickets were put in evidence, and the conditions printed on the back support Mr. Vicker's evidence. That the Magistrate took judicial notice of these conditions is proved by his reference to them in his Grounds of Judgment.

The purchaser of the tickets clearly bought them subject to the conditions endorsed thereon, in the same way that the purchaser of a railway ticket is similarly bound by conditions appearing on the back of it; and on the face of these tickets appear the words "Conditions See Back."

This evidence, in my view proved that the sweep (which is admittedly a lottery) was not a public lottery: in other words "the contrary has been proved" (according to the requirements of Sections 2 (i) and 8A of the Enactment) by the evidence for the prosecution. The accused could have called no stronger evidence than that of Mr. Vickers, coupled with the conditions on the back of the tickets.

If the sweep is not a public lottery, and consequently the tickets in it are not "lottery tickets" within the definition, can the nature of the tickets, by being transferred (contrary to the conditions endorsed on the tickets) by members of the Turf Club or others, to members of the public, be changed, so as to become "lottery tickets" within Section 4 (i) (d)?

Does the fact that, without the knowledge of a member of the Turf Club to whom the ticket was issued, some other person allows the public to "have access to" the lottery, by purchasing tickets in it, change the status of the lottery?

Can a lottery which is proved not to be a public lottery in the Straits Settlements, become one in the Federated Malay States? This is the suggestion made by the Deputy Public Prosecutor, although he has produced no authorities to support the proposition.

The definition of "lottery" in section 2, includes any "game, method, or device whereby money or money's worth in distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same be held, drawn, exercised or managed within or without the Federated Malay States." This provision is clearly intended to bring within the Enactment lotteries held abroad, *e.g.*, the Irish Hospital Sweepstakes, but it does not alter the status of any lottery held outside the Federated Malay States, nor does it affect the definition of "lottery ticket."

To all these questions, in my opinion, the answer is in the negative; there being nothing in the Enactment to cover these contingencies.

The Enactment is a penal one, and must therefore be construed strictly; and if there is any ambiguity or obscurity the benefit of the doubt must be given in favour of the subject, as against the State.

In my opinion, it was proved that the lottery was not a public lottery. In fact, it was proved to be a *bona fide* private club lottery in the Straits Settlements; and since, to sell a "lottery ticket" is only an offence when the ticket is "connected with any public lottery" the appeal must be allowed and the conviction quashed.

[APPELLATE CRIMINAL JURISDICTION]

MUDIE, J.

June 13, 1934.

LIM KIANG.....Appellant

v.

PUBLIC PROSECUTOR.....Respondent

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 11 of 1934]

Common Gaming Houses Enactment, 1912, Sections 2 and 4 (i) (d)—Public Lottery—Sale of ticket in a private lottery to the public.

From the definition of "Public Lottery" in section 2 of the Common Gaming Houses Enactment, 1912 the test of a public lottery is whether the public has access to it or not.

The fact that the organisers intend a lottery to be private is not conclusive, and if the measures they have taken are ineffective to prevent the tickets reaching the public, the lottery is a public one.